

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

WSOU INVESTMENTS, LLC d/b/a BRAZOS
LICENSING AND DEVELOPMENT,

Plaintiff,

v.

DELL TECHNOLOGIES INC., DELL INC.,
EMC CORPORATION, AND VMWARE,
INC.,

Defendants.

Case No. 6:20-cv-00486-ADA

**DECLARATION OF BRIAN A. ROSENTHAL IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

I, Brian A. Rosenthal, declare as follows:

1. I am an attorney permitted to practice law before this Court *pro hac vice* and am licensed to practice law in New York and the District of Columbia. I am a partner with the law firm of Gibson, Dunn & Crutcher LLP and counsel of record for Defendants Dell Technologies Inc., Dell Inc., EMC Corporation, and VMware, Inc. in the above-captioned action. I have personal knowledge and/or am directly informed of the matters stated below and, if called, would testify to them under oath.

2. Attached hereto as **Exhibit A** are true and correct copies of excerpts from the file history of U.S. Patent No. 7,092,360, specifically from a May 18, 2006 Response and Amendment filed by the applicant. These excerpts were retrieved from the United States Patent Office's website (<https://portal.uspto.gov/pair/PublicPair>) on October 3, 2020.

3. Attached hereto as **Exhibit B** is a true and correct copy of an article, Billaud, J.P. et al., "hClock: Hierarchical QoS for Packet Scheduling in a Hypervisor," Association for Computing Machinery, April 15–17, 2003.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 5, 2020

/s/ Brian A. Rosenthal
Brian A. Rosenthal